

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6048 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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J S KALAL

Versus

GUJ MINERAL DEVELOPMENT CORPN  
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Appearance:

MR SB VAKIL for Petitioner  
MR KM PATEL for Respondent No. 1  
RULE SERVED for Respondent No. 2  
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CORAM : MISS JUSTICE R.M.DOSHIT  
Date of decision : 13/06/2000

ORAL JUDGEMENT

At the oral request of the learned advocate Mr.  
Vakil, the order made earlier today is recalled. Heard  
the learned advocates.

The petitioner herein was, at the relevant time, serving in the Gujarat Mineral Development Corporation, the respondent no.1 herein (hereinafter referred to as 'the Corporation') as a Selection Grade Assistant. It is the grievance of the petitioner that he has wrongly been superseded in the matter of promotion to the post of Senior Assistant in as much as some five Selection Grade Assistants were promoted on 17th October, 1986, three of whom were junior to the petitioner. The petitioner has claimed that promotion to the post of Senior Assistant in the Corporation is required to be made on the basis of seniority-cum-merit. If the said principle were correctly applied, the petitioner could not have been found unfit for promotion. The supersession of the petitioner is, therefore, unwarranted.

The petitioner joined the service of the Corporation in the year 1971 as an Assistant. While serving as an Assistant, in the year 1981 a disciplinary action was initiated against the petitioner and was also placed under suspension for unbecoming behaviour and for assaulting an Administrative Officer. However, on the intervention of the then Hon'ble Minister Sanat Mehta, the order of suspension was revoked and the disciplinary inquiry was also not proceeded with further. Once again in the month of August 1981, disciplinary action was initiated against the petitioner for leaving duty without permission. The guilt having been established against the petitioner, 'warning' was issued to him. In the month of June, 1982 also, a show cause notice was issued against the petitioner to show cause why a disciplinary action should not be initiated against him for mis-behaving with another employee one Shri G.S.Brahmbhatt. In spite of the above referred service record of the petitioner, in the year 1984 the petitioner was promoted as Selection Grade Assistant with effect from 1st September, 1980. In the month of August 1986 the petitioner had applied for leave which was not sanctioned. On 3rd January, 1987, the petitioner was transferred to Bhatia, District-Jamnagar, which was challenged by the petitioner before this court in Special Civil Application No. 3348/87, which came to be dismissed on 28th December, 1990. Letters Patent Appeal preferred against the said judgment dated 28th December, 1990, also was dismissed on 2nd July, 1992. It appears that though no interim relief was granted in favour of the petitioner, he did not report for duty at Bhatia. On account his long absence, disciplinary action was initiated against the petitioner on 13th April, 1988. The guilt of the petitioner having been established, he was dismissed from service on 5th September, 1991. The

order of dismissal has been confirmed by this court (Corm : Mr.Jusitce S.k.Keshote) in Special Civil Application No. 9142/98 by the judgment and order dated 20th December, 1999.

Mr. Vakil has relied upon the promotion policy of the Corporation. It is contended that the promotion to the post of Senior Assistant is required to be made on the principle of seniority-cum-merit. He has also relied upon the judgment of this court in the matter of D.B.Shah VS State & ANR (24 (1) GLR, 319). He has submitted that when the principle of seniority-cum-merit is the basis for promotion, the authority is required to examine the case of the individual employee and to consider whether such employee is unfit for promotion. Unless the employee is positively found to be unfit, person is required to be selected for further promotion. It is contended that in the present case, the Corporation has failed to apply the principle of seniority-cum-merit correctly.

The petition is contested. It is submitted that the principle of seniority-cum-merit has correctly been applied in the case of the petitioner. In spite of his poor service record, the petitioner was promoted to the post of Selection Grade Assistant. His case for further promotion to the post of Senior Assistant was considered by the Departmental Promotion Committee in its meeting held on 29th April, 1986. The Committee after considering the confidential records opined that the petitioner could not be assigned higher responsibilities. The petitioner, thus, was found to be positively unfit for promotion. Besides, on several occasions, the petitioner was found to be committing misconduct and pending this petition, he has also been dismissed from service.

The promotion policy of the Corporation provides that "promotion should be considered on seniority-cum-merit". It further provides that "promotion to an employee from one grade to higher grade involves additional duties and responsibilities. The cases of promotion are to be decided on consideration such as efficiency, quality of work, output of work, behaviour with the colleagues and officers, attitude towards job etc.". There can not be any dispute regarding applicability or regarding the principle of seniority-cum-merit. Unless an employee is found to be positively unfit for promotion, he shall be entitled to promotion to a higher post. In the present case also, as disclosed in the counter-affidavit, the Departmental Promotion Committee has applied the principle of

seniority-cum-merit and having regard to the service record of the petitioner, he has been found to be positively unfit for promotion. This court exercising its extra ordinary jurisdiction under Article 226 of the Constitution of India, is not supposed to sit in appeal over the decision of the Departmental Promotion Committee. What is required to be ascertained is that all the relevant materials are taken into consideration and principle applicable is applied in the correct manner. In the present case, it can not be said that the principle of seniority-cum-merit has not been correctly applied, nor it is alleged that the relevant materials have not been taken into consideration. The question of interfering with the decision of the Departmental Promotion Committee shall, therefore, not arise.

In view of the above discussion, the petition is dismissed. Rule is discharged.

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JOSHI